

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION

IN RE: )  
 )  
OAKLEY GRADING AND PIPELINE, ) CHAPTER 11  
LLC, )  
 ) CASE NO. 18-10743-WHD  
 )

**EXPEDITED MOTION FOR ORDER AUTHORIZING AND APPROVING  
DEBTOR'S RETENTION AND EMPLOYMENT OF ACCOUNTANT,  
NUNC PRO TUNC TO PETITION DATE**

Pursuant to 11 U.S.C. §§ 105(a), 327, 330, and 331, Oakley Grading and Pipeline, LLC ("OGP") files this motion requesting authorization to retain and compensate Barlett & Barnett CPAS, P.C. ("Barlett & Barnett") post-petition in the ordinary course of business. This motion is supported by the *Declaration of Victor E. Hartman in Support of First Day Motions* filed of even date herewith and the *Declaration of Chris Barnett* (the "B&B Declaration") attached hereto as **Exhibit A**. OGP shows the Court the following in further support hereof:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this motion under 28 U.S.C. §§ 157 and 1334.
2. This motion is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

**PROCEDURAL BACKGROUND**

4. OGP is a limited liability company organized in the State of Georgia in July 2014.
5. OGP was established as a member-managed LLC with three members: Joseph R. Oakley; Jamie Hughes; and Jonathan Hughes.
6. On May 8, 2017, Mr. Oakley filed suit against the other two OGP members (and a third defendant) in the Superior Court of Henry County (the "Henry County Case"). The Henry

County Case is styled *Joseph R. Oakley v. Jamie Hughes, Jonathan Hughes, and Amber Eubanks*, Civil Action File No. 2017-SU-CV-1393-BA.<sup>1</sup>

7. On May 10, 2017, Judge Brian J. Amero issued an *Order Granting Temporary Injunctive Relief and Appointing Receiver* in the Henry County Case.

8. On May 11, 2017, Judge Amero issued a *Supplemental Order Appointing Receiver* in the Henry County Case.

9. Pursuant to the two Orders entered May 10, 2017 and May 11, 2017 in the Henry County Case, The Hartman Firm, LLC (the "Receiver") was appointed as receiver of OGP.

10. Judge Amero subsequently entered an *Order Extending Receivership* in the Henry County Case, extending the OGP receivership indefinitely and expanding the Receiver's powers.

11. Pursuant to the powers conferred upon the Receiver in the Henry County Case, the Receiver commenced the above-captioned case on April 9, 2018 (the "Petition Date") with a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code").

12. Pursuant to 11 U.S.C. §§ 1107(a) and 1108, OGP continues to operate its business and manage its affairs as a debtor-in-possession; provided that, the Receiver is now in the role of a custodian, as that term is defined in 11 U.S.C. § 101(11).

13. In light of the pre-petition receivership and pending disputes between the members of OGP, the Receiver is separately filing a motion for the Court to appoint a trustee for OGP under 11 U.S.C. § 1104(a).

### **RELIEF REQUESTED**

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<sup>1</sup> OGP was initially a second plaintiff in the Henry County Case. However, OGP was later dropped as a party, and the case caption was adjusted accordingly.

14. Pre-petition, OGP engaged Barlett & Barnett to provide routine accounting and tax services for OGP in the ordinary course of its business.

15. By this motion, OGP seeks authorization to retain Barlett & Barnett under 11 U.S.C. § 105(a) and 327, as of the Petition Date, and without the necessity of a separate, formal retention application approved by this Court, and (b) to pay Barlett & Barnett under 11 U.S.C. §§ 330 and 331 for post-petition services rendered and expenses incurred, subject to certain limits as set forth below, without the necessity of additional Court approval.

16. For those professionals that OGP seeks to employ in connection with the administration of its Chapter 11 case (the "Chapter 11 Professionals"), OGP intends to file individual retention applications with this Court. The Chapter 11 Professionals will be permitted to be compensated in the case only in accordance with applicable provisions of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), the Federal Rules of Bankruptcy Procedure, the Local Rules of this Court, the United States Trustee Fee Guidelines, and any Orders entered in this case governing professional compensation and reimbursement for services rendered and charges and disbursements incurred.

17. While Barlett & Barnett may perform limited work in the bankruptcy case, much of the work they are expected to perform is related to the continued operation of the business of OGP and is required even in the absence of this case.

18. Specifically, depending on how the case develops, the services of Barlett & Barnett may include:

- a. Advise and assist Applicant and Applicant's attorneys in connection with an investigation of the affairs of OGP;

- b. Advise and assist OGP with regard to the preparation and filing of any and all tax returns which may be required;
- c. Provide assistance and advice with regard to the preservation, maintenance, management of potential disposition of OGP's assets;
- d. Advise and assist OGP and OGP's legal counsel in connection with the investigation, analysis, and compilation of data relating to financial and accounting matters or issues in connection with any proceeding in this case, and to prepare such reports, summaries, documents and exhibits as may be required in connection therewith, including, but not limited to, the preparation and filing of reports required by the U.S. Trustee;
- e. Provide support and assistance with regard to the proper receipt, disbursement, and accounting for funds and other property of the estate; and
- f. Perform any other services that may be required as accountants for OGP.

19. Upon information and belief, Barlett & Barnett does not have an outstanding claim against OGP. Additionally, OGP believes, based upon the Declarations referenced herein, Barlett & Barnett does not otherwise have an interest materially adverse to OGP, or the estate, or its creditors; and, thus, OGP seeks its continued employment post-petition.

20. OGP will continue to require the services of Barlett & Barnett while operating as a debtor-in-possession under the Bankruptcy Code to enable OGP to continue normal business activities that are essential to the stabilization and reorganization efforts. Moreover, the work of Barlett & Barnett, albeit ordinary course, is directly related to preserving the value of OGP's estate. The amount of fees and expenses incurred and to be incurred by Barlett & Barnett represent only a small fraction of that value.

21. It will hinder the administration of OGP's estate and perhaps delay work performed by the Barlett & Barnett if OGP is required to withhold payment of the normal fees and expenses of Barlett & Barnett until they comply with the compensation and reimbursement procedures applicable to the Chapter 11 Professionals.

22. Under such conditions, there is a significant risk that Barlett & Barnett will be unwilling to provide services or will suspend services pending a specific court order authorizing such services. Since many of the matters worked on by Barlett & Barnett are active on a week-to-week basis, any delay or need to replace such professionals could have a significant adverse consequence. For example, if the expertise and background knowledge of Barlett & Barnett with respect to the particular matters for which they are responsible prior to the Petition Date is lost, the estate undoubtedly will incur additional and unnecessary expenses because OGP will be forced to retain other professionals without such background and expertise at potentially higher rates. Therefore, it is in the best interest of OGP's estate to avoid any disruption of the professional services required in the day-to-day operation of its business.

#### **PROPOSED RETENTION PROCEDURES**

23. OGP proposes that it be permitted to continue to employ and retain Barlett & Barnett. Barlett & Barnett has submitted a Declaration outlining the nature of the continued work to be performed and its relationship with OGP.

24. OGP further requests a hearing on this motion, with an opportunity to object, upon the filing and service of this motion. If no objection is received by the objection deadline set by the Court, or if an objection is withdrawn, OGP requests entry of an order approving this motion and authorizing the retention of Barlett & Barnett, *nunc pro tunc* to the Petition Date.

25. OGP further requests the authority to pay, without formal application to or order from this Court, the fees and expenses of Barlett & Barnett upon submission to, and approval by, OGP of an appropriate invoice setting forth in reasonable detail the nature of the post-petition services rendered and expenses incurred<sup>2</sup>.

26. OGP, however, recognizes that bills exceeding certain dollar amounts should be subject to the approval procedures otherwise applicable to the Chapter 11 Professionals. Therefore, OGP proposes that it be permitted to pay, without formal application to the Court by Barlett & Barnett, fees and expenses not exceeding a total of \$10,000.00 per month to Barlett & Barnett.

27. To the extent an invoice from Barlett & Barnett, if paid, will result in a payment exceeding the limits set forth in the preceding paragraph, allowance and payment of such fees and expenses will be subject to Court approval under 11 U.S.C. §§ 330 and 331, the Federal Rules of Bankruptcy Procedure, the Local Rules of this Court, and such procedures as may be approved by the Order of the Court for the Chapter 11 Professionals.

28. OGP proposes to file with the Court a Statement of Fees and Disbursements for Barlett & Barnett (a "Periodic Statement") at least once every four months and serve such Statement on the United States Trustee and any parties requesting notice in this case.

29. A Periodic Statement will include the following information for Barlett & Barnett: (a) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by Barlett & Barnett during the statement period; (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses

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<sup>2</sup> OGP expressly reserves the right to dispute all or any part of such invoices in the ordinary course of its business relationship with Barlett & Barnett.

incurred by Barlett & Barnett during the entire post-petition period; and (c) a general description of the services rendered by Barlett & Barnett during the statement period.

WHEREFORE, OGP requests that the Court expedite review of this motion and grant the requested relief, including (i) entry of an order authorizing OGP to retain Barlett & Barnett without the necessity of a separate, formal retention application approved by this Court, (ii) entry of an order authorizing OGP to compensate Barlett & Barnett for post-petition services rendered, subject to the limitations set forth above, without the necessity of additional Court approval, and (iii) such other and further relief the Court deems just and appropriate.

Submitted by:

BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, P.C.

/s/ Kathleen G. Furr

Kevin A. Stine (GA Bar No. 682588)

kstine@bakerdonelson.com

Kathleen G. Furr (GA Bar No. 589008)

kfurr@bakerdonelson.com

3414 Peachtree Road, N.E.

Atlanta, Georgia 30326

404.577.6000 (Telephone)

404.221.6501 (Facsimile)

*Counsel for the Debtor*

## **EXHIBIT A**



**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>IN RE:</b>	)	
	)	
<b>OAKLEY GRADING AND PIPELINE, LLC,</b>	)	<b>CHAPTER 11</b>
	)	
<b>Debtor.</b>	)	<b>CASE NO. 18-10743-WHD</b>
	)	

**CHRIS BARNETT'S VERIFIED STATEMENT PURSUANT TO FEDERAL RULES OF  
BANKRUPTCY PROCEDURE 2014 AND 5002**

I, Chris Barnett, declare as follows:

1. I am over the age of majority, suffer no disability to testify, and am otherwise fully competent to make this declaration.
2. I am a partner with Barlett & Barnett CPAs, P.C. (the "Firm"), whose office is located at 17 Jefferson Place, Newnan, Georgia 30263.
3. This verified statement is submitted in support of the application of Oakley Grading and Pipeline, LLC (the "Debtor") in the above-styled case, for an order authorizing the employment and retention of the Firm as accountants to perform certain services as set forth in the application.
4. On December 20, 2017, the Debtor retained the Firm to prepare the 2017 federal and state income tax returns and corollary accounting services.
5. Pursuant to the engagement, the Debtor paid a \$1,000 retainer to the Firm.
6. As of April 9, 2018 (the "Petition Date"), the Debtor was current on its obligations to the Firm. Therefore, to the best of the Firm's information and belief, the Firm does not have an unsecured claim against the Debtor as of the Petition Date.

7. To the best of the Firm's information and belief, apart from the limited pre-petition work described in paragraph 4 above, the Firm does not hold or represent any interest adverse to the Debtor, the estate, or creditors of the estate, with respect to the matters on which the Firm is to be employed.

8. The Firm has made a reasonable effort to discover the possibility of conflicts. If the Firm discovers any information that is contrary to or supplemental to statements made herein, the Firm will promptly disclose such information to the Court and the U.S. Trustee.

9. The Firm is not and was not within two years before the Petition Date, a director, officer, or employee of the Debtor or an investment banker of the Debtor.

10. The Firm does not have an interest materially adverse to the interest of the bankruptcy estate of the Debtor, or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtor or an investment banker specified in the foregoing paragraphs, or for any other reasons.

11. Accordingly, I believe the Firm is a "disinterested person" as that term is defined in the Bankruptcy Code.

12. The foregoing constitutes the statement of the Firm pursuant to Section 327 of the Bankruptcy Code and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure.

A handwritten signature in black ink, appearing to read "Chris Barnett", is written over a horizontal line.

Chris Barnett  
Partner  
Bartlett Barnett CPAs P.C.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on April 11, 2018, I electronically filed the instant pleading with the Clerk of Court and served the same through the Court's electronic CM/ECF transmission upon the following Filing Users registered to receive filings in this case and upon those individuals and entities via first-class United States mail at the addresses stated below:

**U.S. MAIL**

Attached Creditor Mailing Matrix

U.S. Attorney for the Northern District of Georgia  
Richard B. Russell Federal Building  
75 Ted Turner Dr. SW  
Suite 600  
Atlanta, GA 30303-3309

Dept. of Justice-Tax Division  
Chief Civil Trial §, S Region  
POBox14198, BenFranklinStation  
Washington, DC 20044

Internal Revenue Service  
401 W. Peachtree St NW  
Stop 334-D  
Atlanta, GA 30308

Internal Revenue Service (CIO)  
PO Box 7346  
Philadelphia, PA 19101-7346

Georgia Department of Revenue  
Suite 9100  
1800 Century Center Blvd NE  
Atlanta, GA 30345

U.S. Trustee  
Office of the United States Trustee  
362 Richard Russell Building  
75 Ted Turner Drive, SW  
Atlanta, GA 30303

Submitted by:

/s/ Kathleen G. Furr  
Kathleen G. Furr (GA Bar No. 589008)  
kfurr@bakerdonelson.com

*Counsel for the Debtor*

Label Matrix for local noticing  
113E-3  
Case 18-10743-whd  
Northern District of Georgia  
Newnan  
Tue Apr 10 14:06:21 EDT 2018

ARGOS USA, LLC  
3015 Winward Plaza  
Suite 300  
Alpharetta, GA 30005-8713

Atlanta Commercial Tire  
5067 Kennedy Road  
Forest Park, GA 30297-2017

Baker Doneslon  
3414 Peachtree Road, NE  
Monarch Plaza Suite 1600  
Atlanta, GA 30326-1153

Bam Curbs  
954 Downing Drive  
Bethlehem, GA 30620-2054

Bo Phillips Company Inc  
3440 Lawrenceville Hwy  
Tucker, GA 30084-5897

C & K Hauling, Inc.  
924 Kelly Farm Rd.  
Newnan, GA 30265-1445

Core & Main LP  
1830 Craig Park Court  
Saint Louis, MO 63146-4122

Curry Contracting Services LLC  
312 Crosstown Rd. #190  
Peachtree City, GA 30269-2948

David Hughes  
732 West Solomon Street  
Griffin, GA 30223-2741

Eade Excavation, LLC  
3080 Smokey Road  
Newnan, GA 30263-5036

Exceptional Products, Inc.  
P O Box 2892  
Peachtree City, GA 30269-0892

Fafi Hauling, LLC  
6202 Northlake Heights Cir  
Atlanta, GA 30345-2252

Foley Products Company  
P O Box 2447  
Columbus, GA 31902-2447

Fortiline, Inc.  
7025 Northwinds Drive  
Concord, NC 28027-3334

Georgia Department of Revenue  
Suite 9100  
1800 Center Blvd. NE  
Atlanta, GA 30344

Hanson Aggregates Southeast  
15620 Collection Center Drive  
Chicago, IL 60693-0156

Hughes Company  
732 W. Solomon Street  
Griffin, GA 30223-2741

Internal Revenue Service  
P. O. Box 7346  
Philadelphia, PA 19101-7346

(p)INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY OPERATIONS  
PO BOX 7346  
PHILADELPHIA PA 19101-7346

JDH Group, Inc.  
732 W. Solomon Street  
Griffin, GA 30223-2741

Jamie Hughes  
732 West Solomon Street  
Griffin, GA 30223-2741

Joe Hughes  
732 West Solomon Street  
Griffin, GA 30223-2741

Joe Oakley  
732 West Solomon Street  
Griffin, GA 30223-2741

Landscape Depot  
185 Walter Way  
Fayetteville, GA 30214-3999

Mayweather Concrete Constructi  
389 April Court  
Statham, GA 30666-1736

Moha Trans., Inc.  
3845 Charleston Ives Dr.  
Lawrenceville, GA 30045

Oakley Grading and Pipeline, LLC  
105 Kelly Farm Road  
Newnan, GA 30265-2288

R & R Concrete Construction  
40 E Barbara Ln  
Carrollton, GA 30117-5310

Ranger Fueling Services  
P O Box 490  
Zebulon, GA 30295-0490

Secretary of the Treasury  
15th & Pennsylvania Avenue, NW  
Washington, DC 20200

Sellam Trucking, Inc.  
3156 Bridge Walk Drive  
Lawrenceville, GA 30044-5132

Stephens MDS, LP  
5173 Pelican Drive  
Atlanta, GA 30349-5979

Kevin A. Stine  
Baker Donelson  
Monarch Plaza, Suite 1600  
3414 Peachtree Road, N.E.  
Atlanta, GA 30326-1153

TV Testing and Rerounding  
235 Carriage Trail  
Macon, GA 31210-8236

The Hartman Firm, LLC  
3379 Peachtree Road, NE  
Suite 555  
Atlanta, GA 30326-1418

Thomas Concrete  
P O Box 725569  
Atlanta, GA 31139-2569

U. S. Attorney  
600 Richard B. Russell Bldg.  
75 Ted Turner Drive, SW  
Atlanta GA 30303-3315

U. S. Securities and Exchange Commission  
Office of Reorganization  
Suite 900  
950 East Paces Ferry Road, NE  
Atlanta, GA 30326-1382

United Rentals (North America)  
P O Box 100711  
Atlanta, GA 30384-0711

Valentino & Associates  
1280 Winchester Parkway  
Suite 243  
Smyrna, GA 30080-6555

Yancey Bros. Co  
Drawer CS 198757  
Atlanta, GA 30384-0001

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified  
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Internal Revenue Service  
355 E. Hancock Avenue  
Athens, GA 30601

End of Label Matrix	
Mailable recipients	41
Bypassed recipients	0
Total	41